

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JUSTIN MARCUS ZINMAN,

Case No. 2:23-cv-2404-TLN-JDP

Petitioner,

ORDER

v.

JEFF MACOMBER,

Respondent.

Petitioner Justin Marcus Zinman (“Petitioner”), a state prisoner, brought this action under 28 U.S. Code Section 2254 challenging his state conviction. (ECF No. 20.) His initial petitions failed to pass screening. (ECF Nos. 11, 16.) After the second amended petition was filed, but before it was screened, Petitioner voluntarily dismissed the case. (ECF No. 22.) Then, in late September, he filed a notice of intent to file a preliminary injunction (ECF No. 24) and a motion to vacate the closing of the case (ECF No. 25) arguing that the case should proceed on a theory that Cal. Penal Code § 422 is unconstitutional. (*Id.* at 2.) The magistrate judge recommended those motions be denied (ECF No. 26) noting that the arguments in the motion to vacate were legally frivolous. The Court adopted those recommendations (ECF No. 32) and Petitioner appealed that adoption. (ECF No. 39) The Ninth Circuit has issued a limited remand for the

1 purpose of deciding whether a certificate of appealability should issue. (ECF No. 45.) The Court
2 finds that it should not.

3 The arguments in Petitioner's motion for reconsideration are, as the magistrate judge
4 found, frivolous. His claim that California Penal Code § 422 is unconstitutionally vague is
5 legally unfounded and has been rejected by other courts in this circuit. *See Ray v. Clark*, No. CV
6 08-2847-R (PLA), 2011 U.S. Dist. LEXIS 94870, *49-54 (C.D. Cal. Jul. 19, 2011). Further, it
7 was Petitioner's own decision to close the case and withdraw his petition.. A certificate of
8 appealability should issue only if the petitioner has made a substantial showing of the denial of a
9 constitutional right. 28 U.S.C. § 2253(c)(2). Petitioner has not made that showing because he has
10 failed to demonstrate "that jurists of reason could disagree with the district court's resolution of
11 his constitutional claims or that jurists could conclude the issues presented are adequate to
12 deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

13 Accordingly, the Court declines to issue a certificate of appealability as to the denial of
14 Petitioner's motions to vacate (ECF Nos. 25, 30) and his motion for preliminary injunction. (ECF
15 No. 27.)

16 Date: February 12, 2025

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TROY L. NUNLEY
21 CHIEF UNITED STATES DISTRICT JUDGE
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